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REGIONAL OFFICE  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**

'99 MAR 31 P12:25

**IN THE MATTER OF:**

Jennings Pump Company  
Detroit, Michigan

Respondent

US  
DOCKET No. CAA-5-99-010  
PROTECTION  
REGION V

**COMPLAINT**  
**AND**  
**NOTICE OF OPPORTUNITY FOR HEARING ON**  
**PROPOSED ADMINISTRATIVE ORDER ASSESSING PENALTIES**

This civil administrative action is instituted pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(2), 22.43, against Respondent, Jennings Pump Company (Jennings). The Complainant is by lawful delegation the Acting Director of the Air and Radiation Division of the United States Environmental Protection Agency, (U.S. EPA), Region 5.

**REGULATORY BACKGROUND**

1. Pursuant to Section 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), the U.S. EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 C.F.R. Part 63, Subpart N) on January 25, 1995. 60 Fed. Reg. 4963. These regulations apply to "affected sources," as defined at 40 C.F.R. § 63.2.

2. Under 40 C.F.R. § 63.340, the "affected sources" to which the NESHAP requirements of 40 C.F.R. Part 63, Subpart N, apply include each

chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

3. 40 C.F.R. § 63.341 defines "facility" as the major or area source at which chromium electroplating or chromium anodizing is performed.

4. 40 C.F.R. § 63.341 defines "chromium electroplating or chromium anodizing tank" as the receptacle or container in which hard or decorative chromium electroplating or chromium anodizing occurs.

5. 40 C.F.R. § 63.341 defines a "decorative chromium electroplating facility" as the process by which a thin layer of chromium (typically 0.003 to 2.5 microns) is electrodeposited on a base metal, plastic, or undercoating to provide a bright surface with wear and tarnish resistance.

6. Pursuant to 40 C.F.R. § 63.343(b) (1), the owner or operator of an affected source subject to the requirements of 40 C.F.R. Part 63, Subpart N, is required to conduct an initial performance test as required under 40 C.F.R. § 63.7.

7. Pursuant to 40 C.F.R. § 63.7(a) (2) (iii), the owner or operator of an affected source subject to the requirements of 40 C.F.R. Part 63, Subpart N, is required to conduct the initial performance test within one-hundred and eighty (180) days of the January 25, 1997 compliance date for decorative chromium electroplating tanks, as established under 40 C.F.R. § 63.343(a) (1) (ii).

8. Pursuant to 40 C.F.R. § 63.342 (f) (3) (I), the owner or operator of an affected source subject to the work practices of 40 C.F.R. § 63.342 (f) shall prepare an operation and maintenance plan to be implemented no later than the January 25, 1997 compliance date.

**GENERAL ALLEGATIONS**

9. Respondent, Jennings, is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

10. Jennings is the "owner or operator" of a decorative chromium electroplating facility located at 19175 Mt. Elliott, Detroit, Michigan "the Jennings facility").

11. The Jennings facility is a major or area source at which chromium electroplating is performed, and is therefore a "facility" within the meaning of 40 C.F.R. § 63.341.

12. The Jennings facility is an "affected source" within the meaning of 40 C.F.R. §§ 63.2 and 63.340.

**COUNT I**

13. Paragraphs 1 through 12 of this Complaint are hereby incorporated by reference as if fully set forth herein.

14. Under 40 C.F.R. § 63.7(a)(2)(iii), Jennings was required to conduct a performance test no later than 180 days after the January 25, 1996 compliance date for decorative chromium electroplating tanks, as established under 40 C.F.R. § 63.343(b)(1).

15. Jennings did not conduct a performance test no later than 180 days after the January 15, 1996 compliance date for decorative chromium electroplating tanks, as established under 40 C.F.R. § 63.343(b)(1).

15. On September 16, 1998, the U.S.EPA issued a Finding of Violation to Jennings, under Section 113(a)(1) of the Act, 42 U.S.C. § 7313(a)(1), notifying Jennings that it was in violation of the applicable NESHAPs. Also

on that date, U.S.EPA issued an information request to Jennings, under Section 114(a) of the Act, 42 U.S.C. § 7414(a), requiring the company to produce certain information and conduct appropriate performance testing.

16. On January 26, 1999, the U.S. EPA received the results of a performance test from Jennings, conducted on December 14, 1998.

17. Jennings' failure to conduct the required performance testing within 180 days after the compliance date constitutes a violation of 40 C.F.R. § 63.7(a)(2)(iii), and of Section 112 of the Clean Air Act.

18. Jennings' violation of the testing requirements at 40 C.F.R. § 63.7(a)(2)(iii), and of Section 112 of the Clean Air Act, subjects it to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### **COUNT II**

19. Paragraphs 1 through 12 of this Complaint are hereby incorporated by reference as if fully set forth herein.

20. Under 40 C.F.R. § 63.342(f)(3)(I), the owner or operator of an affected source subject to the work practice requirements of 40 C.F.R. § 63.342(f) shall prepare an operation and maintenance plan to be implemented no later than the January 25, 1996 compliance date.

21. On August 14, 1998, the U.S. EPA performed an inspection of the Jennings' facility.

22. During the August 15, 1998 inspection, Jennings could not produced an operation and maintenance plan.

23. Jennings' failure to prepare an operation and maintenance plan to be implemented no later than the January 25, 1996 compliance date constitutes a violation of the record keeping requirement established under

40 C.F.R. § 63.342 (f) (3) (I), and of Section 112 of the Clean Air Act.

24. Jennings' violation of 40 C.F.R. § 63.342(f) (3) (I), and of Section 112 of the Clean Air Act, subjects it to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

**NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

25. Pursuant to Section 113(d) (1) of the CAA, 42 U.S.C. § 7413(d) (1), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule at 61 Fed. Reg. 69362 (Dec. 31, 1996), the Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, up to a total of \$220,000, for violations of requirements under the CAA. The proposed civil penalty herein has been determined under those authorities in accordance with Section 113(e) (1) of the Act, 42 U.S.C. § 7413(e) (1), which requires Complainant to take the following factors into consideration in determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by credible evidence (including evidence other than the applicable test method); payment by Respondent of penalties previously assessed for the same alleged violations; the economic benefit of noncompliance; and the seriousness of the alleged violations (in addition to such other factors as justice may require).

26. After consideration of the factors set forth at Section 113(e) (1) of the CAA, based upon the facts and circumstances alleged in this Complaint, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing

Administrative Penalties assessing a penalty in the amount of \$24,600.00. This proposed penalty was calculated under Section 113(e) of the Act, with specific reference to the Clean Air Act Stationary Source Penalty Policy (Penalty Policy). The Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. The penalty calculation is explained in more detail below. A copy of the Penalty Policy accompanies this Complaint.

27. In assessing the proposed penalty, U.S. EPA considered the importance of the regulatory requirements violated. This factor is accounted for under the proposed penalty for the violations set forth herein.

28. In assessing the proposed penalty, U.S. EPA considered the importance of the particular requirements to the regulatory scheme. This factor is accounted for under the proposed penalty for the violations set forth herein.

29. In assessing the proposed penalty, U.S. EPA considered the economic benefit which a violator derives from the alleged violations in determining the appropriate penalty. A violator cannot be allowed to derive monetary profit from noncompliance with the Act, both for deterrence purposes and because other regulated entities incurred expenses in complying with the Act. Respondent conducted the required initial performance test on December 14, 1998. Compliance with testing and reporting requirements was achieved approximately twenty nine (29) months after the required date. Accordingly, the proposed penalty includes the economic benefit that the Respondent received from a twenty nine (29) month delay in complying with the testing and reporting requirements.

30. In assessing the proposed penalty, U.S. EPA considered the actual

or possible harm resulting from the alleged violations. Chromium, the pollutant of concern, is listed as a toxic air pollutant in Section 112(b) (1) of the Act. Accordingly, this proposed penalty includes a component corresponding to the potential harm from emitting chromium, a toxic air pollutant.

31. In assessing the proposed penalty, U.S. EPA considered the quality of the air in the area where the violating facility is located with respect to the pollutant(s) involved in the violations. The proposed penalty does not include a component for the quality of the air in the area, as there is not an applicable National Ambient Air Quality Standard for chromium.

32. In assessing the proposed penalty, U.S. EPA considered the duration period of the violations. Jennings operated the chrome plating tanks for twenty nine (29) months during the period of violation. Accordingly, this proposed penalty includes a component corresponding to the potential harm from twenty nine (29) months months of violation.

33. In assessing the proposed penalty, U.S. EPA considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth is believed to be under \$100,000. This proposed penalty includes a component which considers this size of Respondent's business.

34. In assessing the proposed penalty, U.S. EPA considered Respondent's full compliance history and good faith efforts to comply. Respondent's compliance history, along with good faith efforts Respondent made to comply, and its degree of cooperation, are reflected in the proposed penalty.

35. In assessing the proposed penalty, U.S. EPA considered whether Respondent has paid penalties previously assessed for the same violation(s).

Respondent is not believed to have paid any penalties for the violations at issue, and no penalty adjustment was deemed warranted by this factor.

36. The proposed penalty of \$24,600.00 reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business.

37. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

38. The Respondent may pay the penalty by certified or cashier's check, payable to Treasurer, the United States of America, and remit to:

United States Environmental Protection Agency, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

The check shall include the name of the case and the Docket Number on the check and be accompanied by a transmittal letter. Simultaneous with the payment of the check at the above address, the Respondent shall send copies of both the check and the transmittal letter to the following three addressees:

Regional Hearing Clerk  
Planning and Management Division (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Louise Gross  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Joseph Cardile  
Environmental Engineer



Air and Radiation Division (AE-17J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**OPPORTUNITY TO REQUEST A HEARING**

39. Section 113(d) (2) of the Act, 42 U.S.C. § 7413(d) (2) requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed below.

40. The hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992), a copy of which accompanies this Complaint.

**ANSWER**

41. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

42. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied. Your Answer also specifically shall state:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts that you intend to place at issue; and
- c. Whether you request a hearing discussed in Paragraphs 56 and 57, above.

43. Failure to respond to any factual allegation in this Complaint shall constitute admission of the alleged fact.

44. You must send a copy of your Answer and any documents subsequently filed in this action to Louise Gross, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Gross at (312) 886-6844.

45. If you fail to file a written Answer within thirty (30) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27 or 22.31.

#### **SETTLEMENT CONFERENCE**

46. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Joseph Cardile, U.S. EPA, Region

5, Air Enforcement and Compliance Assurance Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Cardile at (312) 353-2151.

47. Your request for an informal settlement conference does not extend the thirty (30) calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

49. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Clean Air Act or any other Federal, State or local law or regulation.

3-31-99  
Date

  
Richard C. Karl, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5  
Chicago, Illinois 60604-3590

CAA-5-99-010

**CERTIFICATE OF SERVICE**

I certify that I filed the original of the foregoing Complaint and Notice of Opportunity for Hearing on Proposed Administrative Order (Order) Assessing Penalties Against Jennings Pump Company (Jennings), Docket No. CAA-5-99-010 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the Order along with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and a copy of the Penalty Policies (described in the Complaint) was sent via certified mail, return receipt requested, to:

Kathleen Allender, P.C.  
510 Main Street, Suite 7  
Belleville, Michigan 48111

P 664 397 147  
Certified Mail Number

Thomas Creagh, President  
Jennings Pump Company  
19175 Mt. Elliott  
Detroit, Michigan 48234

P 664 397 146  
Certified Mail Number

on the 31 day of March, 1999.

Shanee Rucker  
Shanee Rucker, Secretary  
ARD/AECAB/AECAS (MI/WI)

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